



UNITED STATES DISTRICT COURT  
FOR THE CENTRAL DISTRICT OF CALIFORNIA

October 2023 Grand Jury

UNITED STATES OF AMERICA,

Plaintiff,

v.

ANDREW A. WIEDERHORN,  
WILLIAM J. AMON,  
REBECCA D. HERSHINGER, and  
FAT BRANDS INC.,

Defendants.

CR No. 2:24-cr-00295-RGK

I N D I C T M E N T

[26 U.S.C. § 7212(a): Endeavoring to Obstruct the Administration of the Internal Revenue Code; 26 U.S.C. § 7201: Evasion of Payment and Assessment of Tax; 26 U.S.C. § 7206(2): Aiding and Assisting Filing of False Tax Returns; 18 U.S.C. § 1343: Wire Fraud; 15 U.S.C. §§ 78m(k), 78ff: Extension and Maintenance of Credit in the Form of Personal Loan from Issuer to Executive Officer; 15 U.S.C. §§ 78m(b)(2)(B), 78ff(a) and 17 C.F.R. § 240.13b2-2: False Statements and Omission of Material Facts in Statements to Accountants in Connection with Audits and Reviews; 18 U.S.C. § 1350(c)(2), 17 C.F.R. §§ 229.402, 229.404: Certifying Faulty Financial Reports; 18 U.S.C. § 1001(a)(2): Making False Statements; 18 U.S.C. § 2(b): Willfully Causing Act To Be Done]

The Grand Jury charges:

1 INTRODUCTORY ALLEGATIONS  
2

At times relevant to this Indictment:

3 A. SUMMARY OF INDICTMENT

4 1. Defendant ANDREW A. WIEDERHORN was the Chief Executive  
5 Officer and controlling shareholder of defendant FAT BRANDS INC.  
6 ("FAT"), a publicly traded casual-dining franchise company. From no  
7 later than in or around 2010 through in or around January 2021,  
8 defendant WIEDERHORN caused defendant FAT, as well as its affiliate,  
9 Fog Cutter Capital Group Inc. ("FOG"), to compensate him through  
10 approximately \$47 million in distributions, which he, defendants  
11 WILLIAM J. AMON and REBECCA D. HERSHINGER, and others categorized as  
12 "shareholder loans" from FOG in order to conceal the true nature of  
13 the payments from defendant FAT's Board of Directors ("Board"), its  
14 independent auditors, its minority shareholders, the Securities and  
15 Exchange Commission ("SEC"), and the broader investing public.

16 2. In fact, as defendant WIEDERHORN then knew, these  
17 distributions were not loans, and defendant WIEDERHORN had no  
18 intention of repaying these sham "loans." For years, he posted no  
19 collateral, was not even assessed interest, and made no payments on  
20 interest or principal. Instead, defendant WIEDERHORN caused the  
21 \$47 million in compensation and distributions to be both extended and  
22 periodically forgiven from in or around 2016 through in or around  
23 January 2021. In other words, defendant WIEDERHORN, posing as both  
24 "lender" and "borrower," caused defendant FAT and FOG to extend to  
25 him and then "forgive" tens of millions of dollars in distributions  
26 made in the fraudulent form of loans -- all while paying no income  
27 tax on these distributions and, in fact, using them to generate net  
28

1 operating losses ("NOLs") to provide defendant FAT with financially  
2 beneficial tax treatment.

3       3. In so doing, defendant WIEDERHORN willfully concealed from  
4 the Internal Revenue Service ("IRS") millions of dollars of taxable  
5 income, thereby evading payment of millions of dollars in preexisting  
6 tax debts and evading assessment of millions more.

7       4. As defendant WIEDERHORN's tax preparer, defendant AMON  
8 willfully assisted and advised defendant WIEDERHORN to submit  
9 fraudulent filings to the IRS omitting millions of dollars in taxable  
10 income, notwithstanding defendant AMON's awareness that defendant  
11 WIEDERHORN was fraudulently treating as "shareholder loans" cash  
12 transfers that defendant WIEDERHORN had otherwise repeatedly referred  
13 to as "distributions" and "compensation."

14       5. To sustain the scheme, and despite federal laws designed to  
15 protect investors and insure transparency and integrity by  
16 prohibiting publicly traded companies from extending or maintaining  
17 credit to their executives in the form of shareholder loans,  
18 defendants WIEDERHORN and HERSINGER misrepresented and concealed the  
19 true nature of the payments from defendant FAT's Board, its  
20 independent auditors, its minority shareholders, the Securities and  
21 Exchange Commission ("SEC"), and the broader investing public, and,  
22 along with other employees of defendant FAT, caused defendant FAT  
23 illegally to extend and maintain credit to defendant WIEDERHORN in  
24 the form of shareholder loans.

25       6. On or around December 1, 2021, defendants WIEDERHORN and  
26 FAT learned that defendant WIEDERHORN was the target of a federal  
27 criminal investigation into defendant WIEDERHORN's and defendant  
28 FAT's financial dealings. On or around February 22, 2022, defendant

1 FAT publicly claimed that it was "cooperating with the government  
2 regarding these matters." After members of defendant FAT's Board  
3 communicated with the government regarding that federal criminal  
4 investigation, however, defendant WIEDERHORN removed every director  
5 other than himself on or around March 28, 2023, and reconstituted  
6 defendant FAT's Board with a majority of non-independent directors  
7 under his control.

8 B. DEFENDANTS AND RELATED PERSONS AND ENTITIES

9       7. Defendant WIEDERHORN was a resident of Beverly Hills,  
10 California.

11       8. Defendant WIEDERHORN was the Chief Executive Officer  
12 ("CEO") and controlling shareholder of defendant FAT, a Delaware  
13 corporation headquartered in Beverly Hills. As the CEO of defendant  
14 FAT, defendant WIEDERHORN owed fiduciary duties, including duties of  
15 care and loyalty, to defendant FAT, and was also required to certify  
16 that defendant FAT's periodic reports with the SEC, including annual  
17 reports using SEC Form 10-K and quarterly reports using SEC Form 10-  
18 Q, fully complied with requirements of the Securities Exchange Act of  
19 1934 and that information contained in those reports fairly  
20 presented, in all material respects, the financial condition and  
21 results of operations of defendant FAT.

22       9. Defendant FAT was a global franchising company that  
23 acquired and developed casual-dining restaurant concepts, including  
24 Fatburger, Johnny Rockets, Hurricane Grill and Wings, Yalla  
25 Mediterranean, and Ponderosa and Bonanza Steakhouses. Defendant FAT  
26 was also an "issuer" of securities as defined by Title 15 of the  
27 United States Code, subject to the reporting requirements set forth  
28

1 therein, and its shares were listed and traded on the Nasdaq National  
2 Market ("Nasdaq") under the ticker symbol "FAT."

3 10. Defendant WIEDERHORN was also the controlling shareholder  
4 of FOG. FOG was a holding company headquartered in Beverly Hills  
5 that ultimately conveyed its ownership interests in restaurant brands  
6 to defendant FAT in connection with defendant FAT's 2017 Initial  
7 Public Offering ("IPO") and the December 2020 merger between  
8 defendant FAT and FOG.

9 11. FOG owned approximately 80% of defendant FAT's outstanding  
10 shares after defendant FAT's 2017 IPO, and defendant WIEDERHORN and  
11 his family members and associates owned and controlled approximately  
12 80% of FOG.

13 12. Defendant AMON, a resident of Los Angeles, California, was  
14 a Managing Director of the Los Angeles Office of Andersen, a global  
15 tax-advisory firm. Defendant AMON was a Certified Public Accountant  
16 ("CPA") licensed in California, an inactive attorney, and an  
17 experienced tax professional with approximately forty-five years of  
18 advisory experience. Defendant AMON, with other colleagues at  
19 Andersen, provided tax-advisory services to defendants WIEDERHORN and  
20 FAT as well as to FOG.

21 13. Defendant HERSHINGER was a resident of Los Angeles County  
22 and defendant FAT's Chief Financial Officer ("CFO"). As defendant  
23 FAT's CFO, defendant HERSHINGER owed fiduciary duties, including  
24 duties of care and loyalty, to defendant FAT, and was also required  
25 to certify that defendant FAT's periodic reports with the SEC,  
26 including annual reports using SEC Form 10-K and quarterly reports  
27 using SEC Form 10-Q, fully complied with requirements of the  
28 Securities Exchange Act of 1934 and that information contained in

1 those reports fairly presented, in all material respects, the  
2 financial condition and results of operations of defendant FAT.

3 C. FEDERAL TAX OBLIGATIONS

4 14. The Internal Revenue Code ("Title 26") imposed four types  
5 of tax obligations on employers with respect to wages paid to  
6 employees: (1) income tax; (2) Social Security tax; (3) Medicare tax;  
7 and (4) federal unemployment tax (collectively, "payroll taxes").

8 15. Income tax was calculated based upon the amount of wages  
9 employees received; Social Security tax and Medicare tax were imposed  
10 by the Federal Insurance Contributions Act ("FICA") and were  
11 collectively referred to as "FICA" taxes. FICA taxes were imposed  
12 separately on employees and on employers.

13 16. Employers were required to withhold employee FICA taxes and  
14 income taxes from the wages paid to their employees, and to pay over  
15 the withheld amounts to the United States. The employer's duty to  
16 pay over income taxes required to be collected existed even if the  
17 taxes were not actually withheld from the employees' wages. The  
18 employee FICA taxes and income taxes that employers were required to  
19 withhold and pay over to the United States were commonly collectively  
20 referred to as "Trust Fund Taxes" because federal law required  
21 employers to hold the withheld amounts in trust until they were paid  
22 to the United States Treasury on employees' behalf.

23 17. The IRS assessed a Trust Fund Recovery Penalty ("TFRP")  
24 against any person responsible for collecting or paying withheld  
25 Trust Fund Taxes who willfully failed to collect or pay them. A  
26 responsible person was a person or group of people at an employer  
27 with the duty to perform and the power to direct the collecting,  
28 accounting, and paying of Trust Fund Taxes.

1       18. Gross income was defined under Title 26 as all income from  
2 whatever source derived, including, but not limited to, the following  
3 items: (1) compensation for services, including fees, commissions,  
4 fringe benefits, and similar items; (2) gross income derived from  
5 business; (3) gains derived from dealings in property; and  
6 (4) dividends. Bonuses from employers were included in the  
7 definition of gross income.

8       19. Individuals who failed to pay over taxes due were subject  
9 to civil IRS collection efforts. The IRS had the power to levy and  
10 seize assets to satisfy delinquent tax balances.

11       20. NOLs arose under the federal tax laws when a company's  
12 allowable deductions exceeded its taxable income. NOLs could be  
13 applied to offset a company's tax liability in other, subsequent  
14 periods through a "loss carryforward."

15       D. METHODS OF COLLECTING AND EVADING TAXES OWED

16       21. If an individual did not pay the full amount of taxes owed,  
17 the IRS could institute a collection process to satisfy the  
18 outstanding tax obligation. Some individuals who owed tax could  
19 qualify for a payment plan, known as an installment agreement, under  
20 which the taxpayer made payments in monthly installments. The IRS  
21 relied upon taxpayers' stated income and assets in fashioning  
22 repayment plans and other efforts to collect taxes owed.

23       22. To assess a taxpayer's ability to repay a tax debt, the IRS  
24 also required completion of an IRS Form 433-A ("Form 433-A"),  
25 otherwise known as a "Collection Information Statement for Wage  
26 Earners and Self-Employed Individuals," which required detailed,  
27 current financial information from taxpayers.

1       23. Concealing income and assets by omitting or misstating  
2 items on a Form 433-A, avoiding transfers of funds into taxpayer  
3 accounts, and titling assets under nominee individuals and business  
4 entities were known methods to impede and evade IRS collection  
5 efforts.

6       24. Generating compensation in forms that appeared not to be  
7 income, such as in the form of reimbursements, shareholder loans, and  
8 transfers of funds through intermediary entities, were additional  
9 methods used to generate income while evading IRS efforts to assess  
10 taxes owed upon such income and collect preexisting tax debts.

11 E. DEFENDANT WIEDERHORN'S PRIOR SHAREHOLDER BORROWING AND LENDING,  
12 FELONY CONVICTIONS, AND KNOWLEDGE OF RELEVANT TAX LAWS

13       25. Beginning no later than in or around 1993, defendant  
14 WIEDERHORN began to cause Wilshire Credit Corporation ("WCC"), a  
15 company for which he served as CEO, to make distributions in the form  
16 of shareholder loans to himself and to a colleague ("WCC Executive").  
17 Defendant WIEDERHORN made these distributions to himself and WCC  
18 Executive in a 2:1 ratio, which corresponded to their employment and  
19 compensation agreement.

20       26. As the size of defendant WIEDERHORN's distributions in the  
21 form of shareholder loans increased between 1993 and 1998, defendant  
22 WIEDERHORN's tax advisors, including Tax Advisor 1, advised defendant  
23 WIEDERHORN that he was required to repay these debts or else pay  
24 income tax on their forgiveness. Tax Advisor 1 also advised  
25 defendant WIEDERHORN that he was required to make interest and  
26 principal payments on shareholder loans, and that, to the extent  
27 defendant WIEDERHORN's borrowings had rendered him insolvent, any  
28 additional borrowings in the form of shareholder loans would be

1 legally improper because it would be commercially unreasonable for a  
2 lender to extend additional loans in that circumstance (i.e., loaning  
3 substantial amounts of money to someone with no ability to repay the  
4 loans).

5       27. Notwithstanding these warnings from Tax Advisor 1,  
6 defendant WIEDERHORN continued the extensions of credit from WCC to  
7 himself and WCC Executive, including extensions and distributions  
8 beyond amounts previously authorized by defendant WIEDERHORN himself  
9 and despite WCC Executive's protests and objections.

10      28. In or around 1998, a publicly traded affiliate of WCC  
11 controlled by defendant WIEDERHORN, Wilshire Financial Services Group  
12 ("WFSG"), plummeted in value in connection with a collapse in the  
13 value of WCC's loan portfolio. Defendant WIEDERHORN nevertheless  
14 continued to compensate himself and WCC Executive through  
15 distributions made in the form of shareholder loans from WCC  
16 notwithstanding the collapse of the value of defendant WIEDERHORN's  
17 holdings in WCC and WFSG.

18      29. Defendant WIEDERHORN ultimately forgave \$65 million in  
19 outstanding putative shareholder loan debts he had owed to WCC.

20      30. Beginning no later than in or around 2001, defendant  
21 WIEDERHORN was informed that he was a target of a federal grand jury  
22 investigation into his business and financial dealings, and was  
23 informed no later than in or around 2003 that that investigation  
24 included his pattern and practice of causing companies under his  
25 control to extend and forgive shareholder loans to him.

26      31. On or about June 3, 2004, defendant WIEDERHORN resolved  
27 that investigation by pleading guilty to Payment of Gratuities, in  
28 violation of Title 18, United States Code, Section 1954, and Filing a

1 False Tax Return, in violation of Title 26, United States Code,  
 2 Section 7206(1), in the United States District Court for the District  
 3 of Oregon, case number 3:04-cr-00238-BR.

4       32. FOG and its affiliates were related corporate entities and  
 5 successors to WFSG and WCC, and, beginning no later than tax year  
 6 2008, FOG and its affiliates generated payroll-tax liabilities for  
 7 which defendant WIEDERHORN became responsible in the form of TFRPs.

8       F. DUTIES OF ISSUERS, CEOs, AND CFOs UNDER THE FEDERAL SECURITIES

9       LAWS

10      33. Under the federal securities laws, defendant FAT, as an  
 11 issuer of securities, was required to file comprehensive periodic  
 12 reports with the SEC, including annual reports using SEC Form 10-K  
 13 and quarterly reports using SEC Form 10-Q.

14      34. SEC regulations required defendant FAT to disclose certain  
 15 information regarding related party transactions and executive  
 16 compensation in their SEC Forms 10-K.

17       a. Related Party Transactions - 17 C.F.R. § 229.404

18           i. Defendant FAT was required to disclose, in the  
 19 "Relationships and Related Transactions" portion of its SEC Form 10-  
 20 K, all disclosures prescribed by Item 404 of SEC Regulation S-K,  
 21 including "any transaction, since the beginning of the registrant's  
 22 last fiscal year . . . in which the registrant was or is to be a  
 23 participant and the amount involved exceeds \$120,000, and in which  
 24 any related person had or will have a direct or indirect material  
 25 interest."

26           ii. A "related person" included "[a]ny director or  
 27 executive officer" of the company as well as "[a]ny immediate family  
 28 member of a director or executive officer of the registrant."

b. Executive Compensation - 17 C.F.R. § 229.402

c. CEO and CFO Certification - 15 U.S.C. § 7241

19                           i. Among other requirements imposed by federal  
20 securities laws, CEOs and CFOs of companies required to file periodic  
21 reports with the SEC were required to sign and certify that:

(I) They had reviewed such report;

23 (II) The report contained no untrue statement of  
24 material fact or omits to state a material fact necessary in order to  
25 make other statements made not misleading;

1 the financial condition and results of operations of the reporting  
2 company;

3 (IV) They were responsible for establishing and  
4 maintaining internal controls;

5 (V) They had disclosed to the reporting  
6 company's independent auditors and audit committee of the board of  
7 directors that all significant deficiencies in the design and  
8 operation of internal controls that could adversely affect the  
9 company's ability to record, process, summarize, and report financial  
10 data and had identified to the independent auditors any material  
11 weaknesses in internal controls; and

12 (VI) They had disclosed any fraud, whether or not  
13 material, that involved management or other employees who have a  
14 significant role.

15 ii. Defendants WIEDERHORN and HERSHINGER, in their  
16 capacity as CEO and CFO of defendant FAT, respectively, were required  
17 to make these certifications in defendant FAT's periodic reports with  
18 the SEC.

19 G. DEFENDANT WIEDERHORN'S TAX DEBTS, IRS COLLECTION EFFORTS,

20 MISREPRESENTATIONS AND MATERIAL OMISSIONS

21 35. From at least 2006 to 2021, defendant WIEDERHORN was the  
22 subject of ongoing IRS collection activities related to nonpayment of  
23 personal income tax and Trust Fund Taxes owed by defendant WIEDERHORN  
24 personally and as a responsible party and guarantor for entities,  
25 including FOG.

26 36. Beginning no later than April 2006, the IRS had issued to  
27 defendant WIEDERHORN notices of intent to levy and notices of liens  
28

1 and had also placed levies and liens on defendant WIEDERHORN's  
2 accounts and assets due to outstanding taxes he owed to the IRS.

3 37. Additional notices of intent to levy, notices of lien, and  
4 levies and liens were placed on his assets in ensuing years,  
5 including in 2009, 2010, 2011, 2013, 2014, 2016, and 2017.

6 38. In or around October 2015, an IRS Revenue Officer ("RO")  
7 interviewed defendant WIEDERHORN regarding unpaid Trust Fund Taxes,  
8 informed defendant WIEDERHORN of his personal liabilities for failure  
9 to pay Trust Fund Tax balances due and owing, and emphasized that the  
10 IRS could levy defendant WIEDERHORN's personal bank accounts along  
11 with defendant WIEDERHORN's other properties and assets should  
12 defendant WIEDERHORN remain delinquent on his federal tax  
13 obligations.

14 39. In or around April 2016, the IRS assessed defendant  
15 WIEDERHORN a penalty of \$2,167,187 for FOG's failure to pay over  
16 Trust Fund Taxes from 2013 to 2015 and established an installment  
17 agreement for payment of the amounts he owed.

18 40. In or around September 2016, the IRS assessed defendant  
19 WIEDERHORN an additional penalty of \$239,141 for failure to pay over  
20 Trust Fund Taxes owed by FOG from the first quarter of 2016.

21 41. In or around May 2018, the IRS assessed defendant  
22 WIEDERHORN an additional penalty of approximately \$687,395 for FOG's  
23 failure to pay over Trust Fund Taxes from the second quarter of 2016  
24 through the third quarter of 2017.

25 42. By on or about March 24, 2021, defendant WIEDERHORN's  
26 unpaid personal income tax liability to the IRS totaled approximately  
27 \$7,743,952, inclusive of statutory interest and penalties, and his  
28 unpaid principal balance totaled approximately \$3,664,224.

1 H. RELEVANT CORPORATE STRUCTURE AND HISTORY OF DEFENDANT FAT AND  
2 FOG

3 43. In or around 2003, FOG purchased the Fatburger casual  
4 burger franchise concept.

5 44. In or around December 2011, FOG purchased Buffalo's Café,  
6 another restaurant concept, and in or around 2017, FOG also purchased  
7 two additional brands, Ponderosa and Bonanza steakhouses.

8 45. In or around October 2017, defendant FAT completed an IPO  
9 of some twenty percent (20%) of its equity being offered to and  
10 purchased by the investing public. In doing so, defendant FAT became  
11 subject to the requirements of issuers under federal securities laws.

12 46. After the IPO, FOG retained approximately eighty percent  
13 (80%) of defendant FAT's common stock, and defendant FAT, in turn,  
14 owned restaurant properties and brands including Fatburger North  
15 America, Buffalo's Franchise Concepts, Ponderosa Franchising Company,  
16 and Bonanza Restaurant Company.

17 47. FOG's retention of 80% ownership of defendant FAT after the  
18 IPO meant that any NOLs generated by FOG could also be used by  
19 defendant FAT to lower its taxable income in the event of a merger  
20 between those two entities.

21 48. On or about September 6, 2017, in connection with its IPO,  
22 defendant FAT disclosed that its "board of directors recognizes the  
23 fact that transactions with related persons present a heightened risk  
24 of conflicts of interests and/or improper valuation" and committed to  
25 "adopt a written policy on transactions with related persons that is  
26 in conformity with the requirements for issuers having publicly-held  
27 common stock that is listed on NASDAQ." Defendant FAT also disclosed  
28 that its "new policy" would require, among other things, that:

1                   a. "any related person transaction . . . must be reviewed  
2 and approved or ratified by a committee of the board of directors  
3 composed solely of independent directors who are disinterested or by  
4 the disinterested members of the board of directors;

5                   b. any employment relationship or transaction involving  
6 an executive officer and any related compensation must be approved by  
7 the compensation committee of the board of directors or recommended  
8 by the compensation committee to the board of directors for its  
9 approval;

10                  c. In connection with the review and approval or  
11 ratification of a related person transaction:

12                   i. management must disclose to the committee or  
13 disinterested directors . . . the name of the related person . . .  
14 the material terms of the related person transaction, including the  
15 approximate dollar value of the amount involved in the transaction,  
16 and all the material facts as to the related person's direct or  
17 indirect interest in, or relationship to, the related person  
18 transaction;

19                   ii. management must advise the committee or  
20 disinterested directors, as applicable, as to whether the related  
21 person transaction complies with the terms of our agreements  
22 governing our material outstanding indebtedness that limit or  
23 restrict our ability to enter into a related person transaction;

24                   iii. management must advise the committee or  
25 disinterested directors, as applicable, as to whether the related  
26 person transaction will be required to be disclosed in our applicable  
27 filings under the Securities Act or the Exchange Act, and related  
28 rules, and, to the extent required to be disclosed, management must

1 ensure that the related person transaction is disclosed in accordance  
2 with such Acts and related rules; and

3                          iv. management must advise the committee or  
4 disinterested directors, as applicable, as to whether the related  
5 person transaction constitutes a 'personal loan' for purposes of  
6 Section 402 of the Sarbanes-Oxley Act."

7       49. On or around July 3, 2018, defendant FAT entered into and  
8 disclosed a Loan and Security Agreement with FB Lending, LLC, by  
9 which FB Lending, LLC would lend \$16 million to defendant FAT so that  
10 defendant FAT could "retire and extinguish all of the existing senior  
11 secured indebtedness" owed to another lender; "complete the  
12 acquisition of Hurricane AMT, LLC"; "fund Transaction Costs"; and  
13 "fund . . . general corporate purposes."

14       50. On or around February 4, 2019, defendant FAT refinanced the  
15 FB Lending Loan Services Agreement by entering into a new Loan and  
16 Security Agreement (the "Lion Fund LSA") with The Lion Fund, L.P. and  
17 The Lion Fund II, L.P. (collectively the "Lion Funds"). In this  
18 refinancing, defendant FAT took on \$20 million of debt at twenty  
19 percent annual interest and used the proceeds to repay the existing  
20 \$16 million FB Lending loan plus accrued interest and fees and  
21 provide what it described as additional general working capital to  
22 defendant FAT.

23       51. On or around December 11, 2020, defendant FAT announced  
24 that it had entered into a merger agreement with FOG by which the  
25 entities would be combined. In connection with such merger,  
26 defendant WIEDERHORN announced that the combination of defendant FAT  
27 and FOG would, among other things, "eliminate limitations that  
28 restrict our ability to use common stock for accretive acquisitions

1 and capital raising. [FOG] holds more than \$100 million of . . .  
2 NOL's, which could only be made available to [defendant FAT] as long  
3 as [FOG] owned at least 80% of [defendant FAT]. With this  
4 combination, the NOL's will be internalized at [defendant FAT], and  
5 we will now have much greater flexibility and optionality in our  
6 capital structure."

7 I. DEFENDANT WIEDERHORN CAUSED DEFENDANT FAT AND FOG TO EXTEND,  
8 MAINTAIN, AND FORGIVE APPROXIMATELY \$47 MILLION IN COMPENSATION  
9 TO HIM IN THE FORM OF SHAM SHAREHOLDER LOANS, WHICH HE AND  
10 DEFENDANT AMON KNEW WERE "DISGUISED COMPENSATION"

11 52. From no later than in or around 2010 through in or around  
12 January 2021, defendant WIEDERHORN caused employees of defendant FAT  
13 and FOG to compensate him through approximately \$47 million in  
14 distributions, which he concealed by categorizing them as  
15 "shareholder loans" for tax purposes.

16 53. As of in or around December 2011, the "ending balance" on  
17 the distributions defendant WIEDERHORN had taken from FOG in the form  
18 of "loans" totaled approximately \$2,063,045, and that balance grew  
19 annually as defendant WIEDERHORN continued to take distributions from  
20 defendant FAT and FOG.

21 54. At no time did defendant WIEDERHORN make an interest  
22 payment upon any of the distributions he took in the asserted form of  
23 "shareholder loans," nor were interest payments demanded by FOG or  
24 defendant FAT.

25 55. Although defendant WIEDERHORN had taken more than \$20  
26 million in distributions styled as "shareholder loans" from in or  
27 around January 2011 through January 2018, a former FOG CFO stated in  
28 an email of January 24, 2018, that FOG's loan documents from 2011 had

1 gone unexecuted. The 2011 shareholder loan documents also set a  
2 limit for loans to defendant WIEDERHORN of \$4 million. At no time  
3 did the authorized FOG shareholder lending limit exceed \$4 million.

4       56. After defendant FAT became an issuer of securities through  
5 its IPO, defendant WIEDERHORN caused millions of dollars from  
6 defendant FAT's accounts to be disbursed to defendant WIEDERHORN and  
7 his family members for their personal benefit. These disbursements  
8 were used to fund the purchase of private-jet travel, vacations, a  
9 Rolls Royce Phantom, other luxury automobiles, jewelry, and a piano.  
10 Defendant WIEDERHORN caused employees of defendant FAT to account for  
11 the disbursements directly from defendant FAT to his accounts as:  
12 (i) an increase in an intercompany loan between defendant FAT and  
13 FOG; and (ii) an increase in FOG's shareholder loan "balance" or  
14 "receivable" to defendant WIEDERHORN.

15       57. This accounting did not accurately describe the economic  
16 substance of these disbursements from defendant FAT to defendant  
17 WIEDERHORN. After the IPO, FOG became a holding company with little  
18 to no business operations or associated revenues of its own. FOG  
19 received the vast majority of its funds from defendant FAT. Between  
20 the IPO and merger between defendant FAT and FOG, almost all of the  
21 "shareholder loan" from FOG to defendant WIEDERHORN derived from  
22 defendant FAT's revenues and borrowings.

23       58. For example, on or about July 3, 2018, FB Lending LLC wired  
24 approximately \$13,630,951 to defendant FAT pursuant to the parties'  
25 lending agreement. Between on or around July 3, 2018, and on or  
26 around October 5, 2018, defendant FAT transferred approximately  
27 \$5,207,351 of that amount to three accounts: a FOG Mechanics Bank  
28 account x3472, a Fatburger North America Mechanics Bank account

1 x3478, and a FOG Mechanics Bank account x3469. Defendant WIEDERHORN  
2 directed an employee of defendant FAT to use approximately \$944,185  
3 of those funds to pay a balance owed on defendant WIEDERHORN's  
4 American Express ("AMEX") Centurion Card that paid for his personal  
5 expenses; approximately \$105,000 to pay defendant WIEDERHORN's rent;  
6 and approximately \$762,455 to be wired directly into defendant  
7 WIEDERHORN's personal Mechanics Bank account x3481.

8 59. In another example, on or about January 30, 2019, the Lion  
9 Funds wired approximately \$1,670,376 to a defendant FAT Mechanics  
10 Bank account x1080. That same day, upon receipt of the Lion Funds  
11 wire, defendant WIEDERHORN caused approximately \$623,364 to be  
12 transferred to the Fatburger North America Mechanics Bank account  
13 x3478, from which a \$604,011 payment was made to satisfy defendant  
14 WIEDERHORN's AMEX Centurion Card personal debt.

15 60. Between approximately on or about October 20, 2017, and May  
16 13, 2019, defendant WIEDERHORN caused defendant FAT to pay more than  
17 \$5 million from the Fatburger North America Mechanics Bank Account to  
18 satisfy defendant WIEDERHORN's personal debts owed on his AMEX  
19 Centurion Card.

20 61. Although defendant FAT and FOG accounted for these  
21 disbursements as "loans," defendant WIEDERHORN characterized them as  
22 "distributions" and "compensation in excess of my salary" to  
23 defendant AMON, putative personal lenders, and others.

24 62. For example, when seeking to establish creditworthiness  
25 with outside parties, on or about September 28, 2020, defendant  
26 WIEDERHORN wrote in an email that, in addition to his disclosed  
27 annual salary of approximately \$400,000, he also received "\$3m-4m of  
28

1 distributions from my company as loans, then periodically the company  
2 forgives those loans."

3       63. When describing FOG's capital structure to outside lenders,  
4 defendant WIEDERHORN also wrote, in or around April 25, 2017, that  
5 "[d]istributions to me (booked as compensation for tax purposes by  
6 the company) were made from time to time in the form of a  
7 loan/advance."

8       64. As of on or about June 30, 2017, defendant WIEDERHORN had  
9 accrued a balance of approximately \$22,438,798 (inclusive of unpaid  
10 "interest") in distributions booked in the form of a shareholder loan  
11 balance he owed to FOG.

12       65. As of on or about December 31, 2017, defendant WIEDERHORN  
13 had transferred to himself additional amounts from defendant FAT and  
14 FOG totaling approximately \$2,525,937 such that the total "balance"  
15 of distributions styled as "shareholder loans" (inclusive of unpaid  
16 "interest") was approximately \$24,964,735.

17       66. On or around January 17, 2018, defendant WIEDERHORN emailed  
18 defendant AMON a "personal financial statement" purporting to  
19 establish his insolvency and, therefore, his inability to repay  
20 existing "shareholder loan" debts owed to FOG. On or around January  
21 24, 2018, defendant AMON responded, noting that "the approach is  
22 complicated" due to the need to "[e]stablish that the advances are in  
23 fact true loans-meaning an advance with an expectation of repayment  
24 . . . v in your case disguised compensation."

25       67. Working further on the preparation of  
26 defendant WIEDERHORN's 2017 income-tax filings on or around October  
27 14, 2018, and preparing to categorize the entire balance owed by  
28 defendant WIEDERHORN to FOG as a set of two forgiven shareholder

1 loans, defendant AMON emailed defendant WIEDERHORN, "I am really  
2 struggling with the December 31, 2017 write off of about \$2.464  
3 million plus interest," because asserting that FOG had written off  
4 that second balance of approximately \$2.5 million "puts in some risk  
5 the much larger June 2017 write off. That is, from a commercial  
6 perspective, why would a company advance additional monies if we just  
7 had to write off over \$20 million in June of the same year?" "My  
8 concern is that the IRS will take issue with both write offs."  
9 Accordingly, defendant AMON suggested that he and defendant  
10 WIEDERHORN should "treat the advances . . . post June 2017 as  
11 compensation."

12 68. In response, defendant WIEDERHORN replied, "treat the \$2.4  
13 as a loan, then recognize as comp in 2018. The board was adamant  
14 that the old loans be written off in June. But when we found a new  
15 underwriter in Q3 and then completed the IPO in Q4, the board felt  
16 comfortable with the additional advances."

17 69. In fact, however, the FOG Board of Directors was not  
18 "adamant that the old loans be written off in June"; they were  
19 instead unaware of the quantity and timing of defendant WIEDERHORN's  
20 distributions because defendant WIEDERHORN unilaterally determined  
21 and controlled, without input or approval from the FOG Board of  
22 Directors, the nature, quantity, and timing of both his distributions  
23 made in the form of shareholder loans as well as all putative events  
24 of forgiveness of the distributions to himself made in the form of  
25 "shareholder loans."

26 70. Notwithstanding the agreement between defendants WIEDERHORN  
27 and AMON that "the \$2.4" million would be recognized as taxable  
28

1 income in defendant WIEDERHORN's 2018 income taxes, such amount was,  
2 in fact, never disclosed as taxable income in tax year 2018.

3       71. After unilaterally causing FOG to "forgive" the \$24 million  
4 in "shareholder debt" he owed to FOG as of the end of 2017, defendant  
5 WIEDERHORN continued to withdraw funds from defendant FAT and FOG  
6 until his "balance" reached approximately \$16.8 million on or around  
7 December 31, 2019.

8       72. On or about January 10, 2020, defendants WIEDERHORN and  
9 AMON agreed to treat this additional \$16.8 million in total  
10 distributions to defendant WIEDERHORN as shareholder debts owed by  
11 defendant WIEDERHORN to FOG forgiven "as of" December 31, 2019, with  
12 defendant AMON emphasizing, "Insolvency . . . is . . . determined  
13 immediately before the debt discharge."

14       73. When the emergence of the COVID-19 pandemic in March 2020  
15 created a more convincing opportunity for defendant WIEDERHORN to  
16 justify "forgiving" the millions he had taken in the form of  
17 shareholder loans, however, defendant WIEDERHORN recharacterized the  
18 date upon which FOG (by defendant WIEDERHORN) had forgiven his \$16.8  
19 million in "debt" to coincide with the pandemic. Thus, by in or  
20 around September 2020, defendant WIEDERHORN had characterized to  
21 defendant FAT's Board and independent auditors at Baker Tilly that  
22 the debt had been "forgiven" in or around March 2020.

23       74. In or around March 2021, defendant AMON supervised the  
24 drafting of an Uncertain Tax Position ("UTP") Memo on behalf of  
25 defendant FAT to its independent auditors at Baker Tilly.

26       75. One draft of the UTP Memo sent to defendant AMON by a  
27 subordinate, V.M., on or about March 11, 2021, contained the

1 assertion, "while the creditor [FOG] is still working with the debtor  
2 [defendant WIEDERHORN], it has ceased making loans to the debtor."

3 76. On the following day, however, on or around March 12, 2021,  
4 V.M. notified defendant AMON that "only 19 million was written off at  
5 3/1/2020, then the line got back up to \$10 million around the date of  
6 the merger in December, and then they wrote off that \$10. So, I  
7 deleted the point that the creditor ceased making more loans to the  
8 debtor in March."

9 77. Notwithstanding this material clarification and change to  
10 the circumstances of the distributions defendant WIEDERHORN had  
11 caused FOG to extend and forgive in the form of shareholder loans,  
12 neither defendant AMON, as drafter, nor defendant HERSHINGER, as  
13 named author, altered the conclusions of the UTP Memo that these  
14 distributions represented "a bona fide debt," nor did defendants AMON  
15 or HERSHINGER disclose in the UTP Memo that defendant WIEDERHORN had  
16 taken an additional \$10 million in distributions after causing FOG to  
17 forgive \$19 million in previous distributions in the form of a  
18 shareholder loan.

19 78. In the UTP Memo, defendants AMON and HERSHINGER also  
20 included the following material misrepresentation: "In March of 2020  
21 the Company assessed the collectability of the note. During the  
22 COVID-19 pandemic, the Company business operations [sic] suffered .  
23 . . . Due to this, the likelihood of repayment seemed remote. The  
24 Company deemed the note uncollectable and wrote-off the shareholder  
25 loan for \$29 million as worthless. Pursuant to Section 166 of the  
26 IRC, a deduction is allowed in the taxable year wherein deemed  
27 worthless. As such, this resulted in COD [cancellation of debt]  
28 income to Andy Wiederhorn in the same year. It is the Company's

1 understanding that Andy Wiederhorn will be recognizing income for the  
2 same amount on his personal tax returns." As defendants AMON and  
3 WIEDERHORN knew, however, from communications between them, defendant  
4 WIEDERHORN had in fact determined to forgive \$16.8 million of such  
5 distributions in the form of shareholder debt as of December 31,  
6 2019, before the COVID-19 pandemic had created a new justification  
7 for doing so.

8       79. Defendant WIEDERHORN recognized no taxable "cancellation-  
9 of-debt" income on his 2020 tax returns, which returns were prepared  
10 by and in consultation with defendant AMON.

11       80. In addition to failing to disclose more recent forgiveness  
12 events of distributions in the form of a shareholder loan, the UTP  
13 Memo also failed to disclose to defendant FAT's independent auditor  
14 that the loans discussed in that memorandum followed prior  
15 distributions and related "events of forgiveness" in favor of  
16 defendant WIEDERHORN totaling tens of millions of dollars, including  
17 in the years 2016 through 2019.

18 J. MATERIAL MISREPRESENTATIONS, OMISSIONS, AND CIRCUMVENTIONS OF  
19 INTERNAL CONTROLS BY DEFENDANTS WIEDERHORN AND HERSHINGER

20       81. As the size of the intercompany transfers between defendant  
21 FAT and FOG increased to fund defendant WIEDERHORN's distributions in  
22 the form of a "shareholder loan" from FOG, both defendant FAT's Board  
23 and independent auditors raised concerns about the transfers to  
24 defendants WIEDERHORN and HERSHINGER.

25       82. In response, defendants WIEDERHORN and HERSHINGER made  
26 material misrepresentations, omitted material facts, and caused  
27 others to make material misrepresentations, material omissions, and  
28

1 misleading statements to defendant FAT's Board and independent  
2 auditors regarding such intercompany transfers.

3       83. For example:

4           a. On or around March 22, 2019, a Hutchinson & Bloodgood  
5 LLP, auditor asked defendant FAT's controller for information about  
6 defendant FAT's January 30, 2019, payment of a \$604,011.12 balance on  
7 defendant WIEDERHORN's personal AMEX card. A few days later, on or  
8 around March 25, 2019, FAT's controller emailed defendant HERSHINGER  
9 asking whether to send a proposed draft response informing the  
10 auditor that "there are various Fatburger North America/FAT Brand  
11 charges from Andy's Black AMEX card that are expensed to Fatburger  
12 North America and FAT Brands." After communicating with defendant  
13 HERSHINGER, FAT's controller omitted in her response to the auditor  
14 that many of the payments on that credit card, which balance  
15 defendant FAT paid down, were defendant WIEDERHORN's personal  
16 expenses.

17           b. On or about May 11, 2019, a member of defendant FAT's  
18 Board emailed defendant WIEDERHORN, defendant HERSHINGER, and  
19 defendant FAT's then-auditors at Hutchinson & Bloodgood asking about  
20 the company's draft first quarter 2019 SEC Form 10-Q filing  
21 reflecting "activity in [the] inter company account," which indicated  
22 an increase in the transfer of funds from defendant FAT to FOG. On  
23 or about that same day, defendant WIEDERHORN responded to defendant  
24 FAT's Board only, prefacing, "I've removed the Auditors from this e-  
25 mail string as this is a board communication, not auditor  
26 communication," before misrepresenting to defendant FAT's Board that  
27 "[t]he increase in intercompany is a combination of tax benefit from  
28 the loss . . . , interest on the intercompany debt \$416k, and

1 principal invested 'in guarantor' /loaned in lieu of the cash  
2 dividends for [FOG] to pay the various tax and legal settlements and  
3 other obligations pending the refi and merger (structured this way to  
4 comply with the original FB lending loan)." In this communication,  
5 defendant WIEDERHORN failed to disclose and materially omitted that  
6 the intercompany balance had increased because of defendant  
7 WIEDERHORN's continuing transfers from defendant FAT to FOG, which he  
8 documented in the form of FOG's "shareholder loan" to himself. These  
9 transfers included payment of the \$604,011.12 balance in or around  
10 January 2019 on defendant WIEDERHORN's personal AMEX credit card.

11       84. In or around February and March 2020, certified public  
12 accountants employed by defendant FAT's new independent auditor,  
13 Squar Milner LLP, began focusing on the increase in intercompany  
14 transfers between defendant FAT and FOG, the reasons for the  
15 transfers, and the process by which defendant FAT had authorized  
16 those transfers.

17       85. On or about February 25, 2020, defendant HERSHINGER sent  
18 defendant WIEDERHORN a spreadsheet from Squar Milner, which requested  
19 additional information about defendant FAT's 2019 journal entries  
20 related to the intercompany transfers between defendant FAT and FOG.  
21 Included in the spreadsheet was the January 30, 2019 payment from  
22 defendant FAT of the \$604,011.12 balance on defendant WIEDERHORN's  
23 personal AMEX credit card.

24       86. On or about March 2, 2020, defendant WIEDERHORN sent  
25 defendant HERSHINGER an email attaching a spreadsheet with defendant  
26 WIEDERHORN's explanations for the transactions identified by Squar  
27 Milner. In his responses, defendant WIEDERHORN misrepresented and  
28 misleadingly described the transfers that were made for his own

1 personal benefit by not disclosing his personal interest in those  
2 transactions. For example, defendant WIEDERHORN described defendant  
3 FAT's January 30, 2019, payment of his \$604,011.12 personal credit  
4 card bill as "Payment on Amex account for corporate and intercompany  
5 (see Amex bill)," without disclosing that this transaction was for  
6 his undisclosed personal benefit. On or around March 3, 2020,  
7 defendant HERSHINGER forwarded defendant WIEDERHORN's message to  
8 Squar Milner.

9       87. On or around March 6, 2020, and referring to a  
10 "conversation from the other day" between Squar Milner's Los Angeles  
11 Managing Partner ("Managing Partner") and defendant WIEDERHORN,  
12 Managing Partner sent defendant WIEDERHORN an email requesting  
13 "clarity in the related party disclosures" in connection with  
14 defendant FAT's 2019 SEC Form 10-K because "[r]elated party  
15 disclosures are a hot button focus issue for the SEC." To that end,  
16 the email noted Squar Milner would be sending defendant WIEDERHORN a  
17 related-party questionnaire to fill out because "much of our reliance  
18 on these transactions is based on the representations of management."  
19 In the same email, Managing Partner also told defendant WIEDERHORN  
20 that the loans from defendant FAT to FOG "are allowable if they are  
21 to [FOG] and not to you personally."

22       88. Managing Partner forwarded that email along with other  
23 messages in a related chain to defendant HERSHINGER on or around  
24 March 19, 2020; neither defendant HERSHINGER nor defendant WIEDERHORN  
25 disclosed to Managing Partner or anyone else at Squar Milner at that  
26 time or for months thereafter that, in fact, "the loans" were to  
27 defendant WIEDERHORN "personally." Instead, they omitted this  
28 material fact.

1       89. On or about March 23, 2020, defendant WIEDERHORN completed  
2 and executed the related-party questionnaire and materially  
3 misrepresented the nature of the intercompany advances from defendant  
4 FAT to FOG. Though defendant WIEDERHORN identified the intercompany  
5 loan between defendant FAT and FOG as a related-party transaction, he  
6 misrepresented that “\$0” of those transactions were for defendant  
7 WIEDERHORN’s personal benefit in 2019 and 2018. In reality, as  
8 defendant WIEDERHORN knew, millions of dollars of funds transferred  
9 from defendant FAT to FOG pursuant to the intercompany account were  
10 for defendant WIEDERHORN’s personal benefit in 2018 and 2019. In  
11 executing this questionnaire, defendant WIEDERHORN also certified  
12 that his answers were “correctly stated to the best of my knowledge  
13 and belief.”

14       90. On or about April 27, 2020, defendants WIEDERHORN and  
15 HERSHINGER, in their capacities as defendant FAT’s CEO and CFO,  
16 signed and sent a representation letter to Squar Milner in connection  
17 of their audit of defendant FAT. In the letter, defendants  
18 WIEDERHORN and HERSHINGER certified that, among other  
19 representations, “we have disclosed to you the identity of the  
20 entity’s related parties and all information concerning related-party  
21 relationships, transactions and amounts receivable from or payable to  
22 related parties of which we are aware, including support for any  
23 assertion that a transaction with a related party was conducted on  
24 terms equivalent to those prevailing in an arm’s-length transaction.”

25       91. During this same time, Squar Milner also expressed concern  
26 to defendants WIEDERHORN and HERSHINGER regarding the authorization  
27 process for the transfer of funds from defendant FAT to FOG. On or  
28 about April 20, 2020, Squar Milner sent defendant HERSHINGER an email

1 identifying a potential "material weakness" in defendant FAT's  
2 internal controls for related party transactions in 2019. Squar  
3 Milner emphasized that "the CEO has the ability to transfer funds for  
4 parent company advances, at no limit, without Board approval and  
5 there was no formal agreement for the advances." On or around April  
6 24, 2020, Squar Milner submitted a report to defendant FAT's audit  
7 committee identifying the same control deficiencies for transfers  
8 from defendant FAT to FOG.

9       92. To address this identified deficiency in authorization  
10 procedures for intercompany transfers, defendants WIEDERHORN and  
11 HERSHINGER created (and defendant WIEDERHORN signed) the Intercompany  
12 Revolving Credit Agreement ("IRCA") on or about April 14, 2020. The  
13 IRCA provided that, beginning in the second quarter 2020, any  
14 additional loans from defendant FAT to FOG "shall be subject to the  
15 approval of [defendant FAT]'s board of directors, in advance on a  
16 quarterly basis." Defendant FAT's Board approved the IRCA during a  
17 meeting on or around April 14, 2020.

18       93. As reflected by minutes taken by defendant HERSHINGER of  
19 the April 14, 2020 Special Meeting of defendant FAT's Board, the  
20 Board "engaged in a rigorous discussion about the Intercompany  
21 Agreement." Nevertheless, neither defendant WIEDERHORN nor defendant  
22 HERSHINGER disclosed to defendant FAT's Board the material fact that  
23 a majority of the funds to be loaned by defendant FAT to FOG pursuant  
24 to the IRCA would then be distributed to defendant WIEDERHORN in the  
25 form of shareholder loans. Instead, defendants WIEDERHORN and  
26 HERSHINGER omitted this material fact from defendant FAT's Board.  
27 Defendant FAT's Board did not approve any advances from defendant FAT  
28 to FOG during the April 24, 2020 Special Meeting.

1       94. On or around April 21, 2020, defendant FAT's Board approved  
2 a \$50,000 increase in the intercompany loan to FOG and resolved that  
3 any further disbursements would require and be addressed at  
4 subsequent meetings.

5       95. On or around April 28, 2020, defendant WIEDERHORN emailed  
6 defendant FAT's Board members about his request for additional loans  
7 from defendant FAT to FOG. In that message, defendant WIEDERHORN  
8 asserted, "I have navigated the cashflow of both FAT and FOG through  
9 these difficult three years carefully keeping in mind the best  
10 interests of all FAT shareholders as well as FOG shareholders. It  
11 does no good to create a situation where FOG is put at risk with its  
12 existing creditors, hence putting the NOL at risk." Defendant  
13 WIEDERHORN additionally falsely stated that "[f]unds at FOG are used  
14 to pay pre-existing pre-IPO liabilities" and listed a number of  
15 specific liabilities with associated monthly payment requirements.  
16 At the end of the FOG liabilities list, defendant WIEDERHORN also  
17 noted that funds loaned under the IRCA would also be devoted to  
18 "SG&A, including compensation at [FOG]." Defendant WIEDERHORN  
19 provided no quantitative estimate or information for this line item,  
20 however, nor did defendant WIEDERHORN disclose that he would route a  
21 majority of the funds requested to himself in the form of a  
22 shareholder loan.

23       96. On or around April 28, 2020, defendant FAT's Board approved  
24 a \$1 million increase in the intercompany loan to FOG for the second  
25 quarter of 2020.

26       97. Also on or about April 28, 2020, defendant FAT filed its  
27 2019 SEC Form 10-K with the SEC. In it, defendants WIEDERHORN and  
28 HERSHINGER certified that they had "reviewed" the annual report and

1 that it did "not contain any untrue statement of a material fact or  
2 omit to state a material fact necessary to make the statements made,  
3 in light of the circumstances under which such statements were made,  
4 not misleading with respect to the period covered by this report."

5 Defendants WIEDERHORN and HERSHINGER also certified, among other  
6 things, that the financial statements within that report fairly  
7 presented "in all material respects the financial condition, results  
8 of operations, and cash flows" of the company and that they had  
9 disclosed "[a]ny fraud, whether or not material, that involves  
10 management or other employees who have a significant role in the  
11 registrant's internal control over financial reporting."

12 Nevertheless, neither defendant WIEDERHORN nor defendant HERSHINGER  
13 disclosed any of the transfers from defendant FAT to defendant  
14 WIEDERHORN personally as related-party transactions in the 2019 SEC  
15 Form 10-K. Nor did defendants WIEDERHORN and HERSHINGER disclose any  
16 of these transfers as executive compensation to defendant WIEDERHORN  
17 in the 2019 SEC Form 10-K.

18 98. On or around July 13, 2020, defendant FAT's Board approved  
19 another \$1 million increase in the loan to FOG for the third quarter  
20 of 2020.

21 99. In connection with these additional disbursements from  
22 defendant FAT to FOG, neither defendant WIEDERHORN nor defendant  
23 HERSHINGER disclosed to defendant FAT's Board that the majority of  
24 such disbursements would be distributed to defendant WIEDERHORN in  
25 the form of a shareholder loan from FOG for his own undisclosed  
26 personal enrichment.

27 100. Without obtaining the necessary Board approvals, defendant  
28 WIEDERHORN also caused distributions from defendant FAT to FOG that

1 exceeded the amounts authorized by the IRCA and defendant FAT's Board  
2 in both the second and third quarters of 2020.

3       101. In the second quarter 2020, defendants WIEDERHORN and  
4 HERSHINGER advanced approximately \$1,354,531 in loans to FOG --  
5 approximately \$304,531 over the limit. In the third quarter 2020,  
6 defendant FAT's intercompany loan ledger showed that defendants  
7 WIEDERHORN and HERSHINGER advanced approximately \$3,762,680 in loans  
8 to FOG -- approximately \$2,762,679 over the limit.

9       102. In the fourth quarter of 2020, defendants WIEDERHORN and  
10 HERSHINGER advanced an additional \$3,133,891 to FOG, much of which  
11 FOG disbursed to defendant WIEDERHORN personally.

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1 COUNT ONE

2 [26 U.S.C. § 7212(a)]

3 [DEFENDANT WIEDERHORN]

4 103. The Grand Jury realleges paragraphs 1 through 102 of this  
5 Indictment here.

6 104. Beginning no later than in or around 2010, and continuing  
7 until at least in or about October 22, 2021, in Los Angeles County,  
8 within the Central District of California, and elsewhere, defendant  
9 WIEDERHORN, knowing of ongoing IRS collection activities, corruptly  
10 obstructed and impeded, and corruptly endeavored to obstruct and  
11 impede, the due administration of the internal revenue laws of the  
12 United States.

13 105. The corrupt obstruction, impedance, and corrupt endeavors  
14 to obstruct and impede operated, in substance, as alleged above in  
15 this Indictment and including the following manners and by the  
16 following means, each such act having a nexus to obstructing the  
17 IRS's collection actions:

18 a. After the IRS had issued notices to defendant  
19 WIEDERHORN no later than 2006 of its intent to levy defendant  
20 WIEDERHORN's bank accounts and place liens upon his assets for unpaid  
21 balances owed, defendant WIEDERHORN, on or about March 14, 2011,  
22 placed a lease to purchase his Los Angeles residence not in his own  
23 name, but in the name of a predecessor and affiliate of FAT.

24 b. From no later than in or around 2010 through in or  
25 around January 2021, defendant WIEDERHORN caused FAT and FOG to  
26 compensate him through approximately \$47,000,000 in distributions,  
27 which, although made and forgiven in the form of "shareholder loans,"  
28 were, in fact, as defendant WIEDERHORN knew, his taxable income.

1                   c. Defendant WIEDERHORN caused these distributions to be  
2 made to him by FAT and FOG notwithstanding that:

3                   i. Defendant WIEDERHORN had no intent to repay these  
4 distributions at the times he caused FAT and FOG to make them.

5                   ii. Neither FAT nor FOG undertook an underwriting  
6 process to determine defendant WIEDERHORN's suitability as a  
7 borrower, including from in or around 2017 through January 2021,  
8 after defendant WIEDERHORN had caused millions of dollars of prior  
9 distributions given in the form of shareholder loans to be  
10 "forgiven."

11                  iii. Neither FAT nor FOG collected interest payments  
12 from defendant WIEDERHORN on these distributions given in the form of  
13 shareholder loans.

14                  iv. Neither FAT nor FOG required defendant WIEDERHORN  
15 to pledge or provide any collateral in connection with these  
16 distributions given in the form of shareholder loans.

17                  v. Neither FAT nor FOG required defendant WIEDERHORN  
18 to adhere to a repayment schedule for these distributions given in  
19 the form of shareholder loans.

20                  vi. Defendant WIEDERHORN, and not the Boards of  
21 Directors of FAT or FOG, made the ultimate decisions as to whether  
22 and when to cancel and forgive such distributions given in the form  
23 of shareholder loans.

24                  d. Beginning no later than in or around 2016 and  
25 continuing through at least in or around January 2021, defendant  
26 WIEDERHORN caused FAT to make direct payments upon defendant  
27 WIEDERHORN's personal credit-card and other debts, including for  
28

1 private aviation services, in order to conceal these expenditures  
2 from the IRS.

3 e. Beginning no later than in or around March 2011 and  
4 continuing through at least in or around May 2021, defendant  
5 WIEDERHORN attempted to frustrate, evade, and delay payment of a  
6 substantial part of approximately \$7,314,020 in federal taxes due to  
7 and owed by him by submitting materially false IRS Forms 433-A to the  
8 IRS, lying to assigned IRS Revenue Officers, using nominee  
9 individuals and business entities to hide assets, and engaging in a  
10 long-term scheme to conceal additional unreported income. Among  
11 other material misrepresentations and acts defendant WIEDERHORN made  
12 and undertook and caused to be made and undertaken to frustrate,  
13 evade, and delay payment:

14 i. On or about March 23, 2016, defendant WIEDERHORN,  
15 through an authorized representative, submitted a Form 433-A to the  
16 IRS containing material misstatements and omitting material  
17 information, including his access to and use of an AMEX Centurion  
18 credit card, the magnitude and nature of his "Actual Monthly  
19 Expenses," "Total Living Expenses," and "Total Income."

20 ii. On or about November 30, 2017, defendant  
21 WIEDERHORN, through an authorized representative, sent a letter to  
22 the IRS attaching a check for \$10,000. By his letter, defendant  
23 WIEDERHORN represented that, apart from "restricted Fat Brands stock  
24 with a time-lock," he had "no cashflow for . . . the next twelve  
25 months other than his salary," and requested "that the levies on  
26 [his] bank accounts [be] released and his installment agreement be  
27 reinstated with this new information."

28

5 (I) An assertion that defendant WIEDERHORN's  
6 Oregon residence was in "foreclosure," when, in fact, defendant  
7 WIEDERHORN had requested and received a mortgage modification in  
8 March 2018 and had listed the same residence as an asset with a net  
9 value of \$5,750,000 on an application for a mortgage for a different  
10 residential property.

11 (II) Misstating the list of credit card accounts  
12 required to be reported by omitting defendant WIEDERHORN's personal  
13 AMEX Centurion credit card from the list of all credit card accounts.

14 (III) Misstating the list of assets required  
15 to be reported by omitting an option to purchase his Los Angeles  
16 residence, for which residence defendant WIEDERHORN had emailed a  
17 financial statement to a mortgage broker the very same day and which  
18 listed that Los Angeles residence as an \$8 million net asset.

19 (IV) Misstating the list of miscellaneous  
20 property by disclosing only \$10,000 in miscellaneous property when in  
21 fact defendant WIEDERHORN and his wife owned at least approximately  
22 hundreds of thousands of dollars of personal property.

26 (VI) Misstating assets by omitting a 2016 Rolls  
27 Royce Phantom Drophead Coupe, which defendant WIEDERHORN had

1 purchased for \$435,211.13 just three days prior, on or around June 9,  
2 2018, and for which he had made a down payment of \$150,000.

3 (VII) Misstating assets by omitting a  
4 Mercedes Benz G63 AMG, which defendant WIEDERHORN had leased just ten  
5 days prior, on or around June 2, 2018.

6 iv. On or around August 24, 2018, defendant  
7 WIEDERHORN caused an LLC he controlled, 929 Foothill, LLC, to offer  
8 to purchase his residence for approximately \$9,094,137, and caused  
9 929 Foothill, LLC, to in fact purchase that residence in or around  
10 September 20, 2018, for approximately \$9,094,500.

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1 COUNT TWO

2 [26 U.S.C. § 7201]

3 [DEFENDANT WIEDERHORN]

4 106. The Grand Jury realleges paragraphs 1 through 102 and 105  
5 of this Indictment here.

6 107. Beginning no later than in or around March 2011 and  
7 continuing through at least in or around May 2021, in Los Angeles  
8 County, within the Central District of California, and elsewhere,  
9 defendant WIEDERHORN willfully and affirmatively attempted to evade  
10 and defeat the payment of a substantial part of approximately  
11 \$7,314,020 in federal taxes and additions to taxes then due and owing  
12 by defendant WIEDERHORN to the United States of America,  
13 specifically, approximately \$3,914,285 in TFRPs as well as  
14 approximately \$3,399,735 in penalties, which had been assessed  
15 against defendant WIEDERHORN, by committing, among others, the  
16 affirmative acts alleged in paragraph 105, the likely effect of each  
17 of which would have been to mislead and conceal defendant  
18 WIEDERHORN's assets and ability to pay defendant WIEDERHORN's  
19 outstanding taxes from the IRS.

1 COUNT THREE

2 [26 U.S.C. § 7201]

3 [DEFENDANT WIEDERHORN]

4 108. The Grand Jury realleges paragraphs 1 through 102 and 105  
5 of this Indictment here.

6 109. During the calendar year 2016, in Los Angeles County,  
7 within the Central District of California, and elsewhere, defendant  
8 WIEDERHORN received taxable income, upon which there was income tax  
9 due and owing to the United States of America.

10 110. Beginning in or around January 2016 and continuing through  
11 at least in or around February 6, 2018, in Los Angeles County, within  
12 the Central District of California, and elsewhere, defendant  
13 WIEDERHORN willfully attempted to evade and defeat the assessment of  
14 the above-stated income tax due and owing by him to the United States  
15 for the calendar year 2016 by committing the acts alleged previously  
16 in this Indictment, and by committing the following affirmative acts:

17 a. Causing to be prepared, and signing, a false and  
18 fraudulent U.S. Individual Income Tax Return, Form 1040, filed with  
19 the IRS for calendar year 2016 on behalf of himself and another,  
20 which declared only approximately \$280,171 in taxable income, when,  
21 in fact, defendant WIEDERHORN had generated additional unreported  
22 income in the approximate amount of \$2,834,601;

23 b. Causing FAT and its predecessors and affiliates to  
24 make direct distributions to him, including in the form of payment of  
25 his personal credit-card debts; and

26 c. Taking distributions from FOG in the form of  
27 shareholder loans.

1 COUNT FOUR

2 [26 U.S.C. § 7201]

3 [DEFENDANT WIEDERHORN]

4 111. The Grand Jury realleges paragraphs 1 through 102 and 105  
5 of this Indictment here.

6 112. During the calendar year 2017, in Los Angeles County,  
7 within the Central District of California, and elsewhere, defendant  
8 WIEDERHORN received taxable income, upon which there was income tax  
9 due and owing to the United States of America.

10 113. Beginning in or around January 2017 and continuing through  
11 at least in or around October 30, 2018, in Los Angeles County, within  
12 the Central District of California, and elsewhere, defendant  
13 WIEDERHORN willfully attempted to evade and defeat the assessment of  
14 the above-stated income tax due and owing by him to the United States  
15 for the calendar year 2017 by committing acts alleged previously in  
16 this Indictment, and by committing the following affirmative acts:

17 a. Causing to be prepared, and signing, a false and  
18 fraudulent U.S. Individual Income Tax Return, Form 1040, filed with  
19 the IRS for calendar year 2017 on behalf of himself and another,  
20 which declared only approximately \$360,807 in taxable income, when,  
21 in fact, defendant WIEDERHORN had generated additional unreported  
22 income in the approximate amount of \$3,909,850;

23 b. Causing FAT and its predecessors and affiliates to  
24 make direct distributions to him, including in the form of payment of  
25 his personal credit-card debts; and

26 c. Taking distributions from FOG in the form of  
27 shareholder loans.

1 COUNT FIVE

2 [26 U.S.C. § 7201]

3 [DEFENDANT WIEDERHORN]

4 114. The Grand Jury realleges paragraphs 1 through 102 and 105  
5 of this Indictment here.

6 115. During the calendar year 2018, in Los Angeles County,  
7 within the Central District of California, and elsewhere, defendant  
8 WIEDERHORN received taxable income, upon which there was income tax  
9 due and owing to the United States of America.

10 116. Beginning in or around January 2018 and continuing through  
11 at least in or around October 15, 2019, in Los Angeles County, within  
12 the Central District of California, and elsewhere, defendant  
13 WIEDERHORN willfully attempted to evade and defeat the assessment of  
14 the above-stated income tax due and owing by him to the United States  
15 for the calendar year 2018 by committing acts alleged previously in  
16 this Indictment, and by committing the following affirmative acts:

17 a. Causing to be prepared, and signing, a false and  
18 fraudulent U.S. Individual Income Tax Return, Form 1040, filed with  
19 the IRS for calendar year 2018 on behalf of himself, which declared  
20 only approximately \$354,356 in taxable income, when, in fact,  
21 defendant WIEDERHORN had generated additional unreported income in  
22 the approximate amount of \$8,932,012;

23 b. Causing FAT to make direct distributions to him,  
24 including in the form of payment of his personal credit-card debts;  
25 and

26 c. Taking distributions from FOG in the form of  
27 shareholder loans.

1 COUNT SIX

2 [26 U.S.C. § 7201]

3 [DEFENDANT WIEDERHORN]

4 117. The Grand Jury realleges paragraphs 1 through 102 and 105  
5 of this Indictment here.

6 118. During the calendar year 2019, in Los Angeles County,  
7 within the Central District of California, and elsewhere, defendant  
8 WIEDERHORN received taxable income, upon which there was income tax  
9 due and owing to the United States of America.

10 119. Beginning in or around January 2019 and continuing through  
11 at least in or around November 23, 2020, in Los Angeles County,  
12 within the Central District of California, and elsewhere, defendant  
13 WIEDERHORN willfully attempted to evade and defeat the assessment of  
14 the above-stated income tax due and owing by him to the United States  
15 for the calendar year 2019 by committing acts alleged previously in  
16 this Indictment, and by committing the following affirmative acts:

17 a. Causing to be prepared, and signing, a false and  
18 fraudulent U.S. Individual Income Tax Return, Form 1040, filed with  
19 the IRS for calendar year 2019, which declared only approximately  
20 \$295,614 in taxable income, when, in fact, defendant WIEDERHORN had  
21 generated additional unreported income in the approximate amount of  
22 \$7,025,311;

23 b. Causing FAT to make direct distributions to him,  
24 including in the form of payment of his personal credit-card debts;  
25 and

26 c. Taking distributions from FOG in the form of  
27 shareholder loans.

1 COUNT SEVEN

2 [26 U.S.C. § 7201]

3 [DEFENDANT WIEDERHORN]

4 120. The Grand Jury realleges paragraphs 1 through 102 and 105  
5 of this Indictment here.

6 121. During the calendar year 2020, in Los Angeles County,  
7 within the Central District of California, and elsewhere, defendant  
8 WIEDERHORN received taxable income, upon which there was income tax  
9 due and owing to the United States of America.

10 122. Beginning in or around January 2020 and continuing through  
11 at least in or around October 22, 2021, in Los Angeles County, within  
12 the Central District of California, and elsewhere, defendant  
13 WIEDERHORN willfully attempted to evade and defeat the assessment of  
14 the above-stated income tax due and owing by him to the United States  
15 for the calendar year 2020 by committing acts alleged previously in  
16 this Indictment, and by committing the following affirmative acts:

17 a. Causing to be prepared, and signing, a false and  
18 fraudulent U.S. Individual Income Tax Return, Form 1040, filed with  
19 the IRS for calendar year 2020, which declared only approximately  
20 \$305,131 in taxable income, when, in fact, defendant WIEDERHORN had  
21 generated additional unreported income in the approximate amount of  
22 \$9,598,483;

23 b. Causing FAT to make direct distributions to him,  
24 including in the form of payment of his personal credit-card debts;  
25 and

26 c. Taking distributions from FOG in the form of  
27 shareholder loans.

1 COUNTS EIGHT THROUGH ELEVEN

2 [26 U.S.C. § 7206(2) ]

3 [DEFENDANT AMON]

4 123. The Grand Jury realleges paragraphs 1 through 102 and 105  
5 of this Indictment here.

6 124. On or about the dates listed below, in Los Angeles County,  
7 within the Central District of California, and elsewhere, defendant  
8 AMON willfully aided and assisted in, and procured, counseled, and  
9 advised the preparation and presentation to the IRS, of U.S.  
10 Individual Income Tax Returns, IRS Form 1040s, on behalf of Andrew A.  
11 Wiederhorn for the calendar years indicated below, which returns were  
12 false and fraudulent as to a material matter in that they understated  
13 the wages and other compensation paid to Wiederhorn, thereby  
14 understating the income and other taxes due to the United States of  
15 America, as defendant AMON then knew:

COUNT	DATE	CALENDAR YEAR
EIGHT	10/30/2018	2017
NINE	10/15/2019	2018
TEN	11/23/2020	2019
ELEVEN	10/22/2021	2020

1 COUNTS TWELVE THROUGH FIFTEEN

2 [18 U.S.C. § 1343]

3 [DEFENDANTS WIEDERHORN AND HERSHINGER]

4 125. The Grand Jury realleges paragraphs 1 through 102 and 105  
5 of this Indictment here.

6 A. THE SCHEME TO DEFRAUD

7 126. Beginning no later than in or around September 2018 and  
8 continuing through at least in or around January 2021, in Los Angeles  
9 County, within the Central District of California, and elsewhere,  
10 defendants WIEDERHORN and HERSHINGER, knowingly and with intent to  
11 defraud, devised, participated in, and executed a scheme to defraud  
12 FAT's Board and minority shareholders as to material matters, and to  
13 obtain money and property, namely, approximately \$17,000,000 in  
14 undisclosed and materially misrepresented distributions in the form  
15 and forgiveness of shareholder loans, by means of materially false  
16 and fraudulent pretenses, representations, and promises, and by the  
17 concealment and omission of material facts.

18 127. The fraudulent scheme operated, in substance, as described  
19 in paragraphs 42 through 102 of this Indictment and as follows:

20 a. Defendant WIEDERHORN transferred and caused employees  
21 of FAT and its affiliates and predecessors to transfer to him  
22 millions of dollars of distributions and compensation in the form of  
23 payments toward defendant WIEDERHORN's credit-card and other personal  
24 debts and payments to defendant WIEDERHORN's family members.

25 b. Knowing of these payments, and notwithstanding their  
26 fiduciary duties to FAT, neither defendant WIEDERHORN nor defendant  
27 HERSHINGER informed FAT's Board, its independent auditors, its  
28 minority shareholders, the SEC, or the broader investing public that

1 defendant WIEDERHORN was receiving millions of dollars in undisclosed  
2 distributions and compensation from FAT, and instead materially  
3 misrepresented the nature of these transactions and the extent to  
4 which FAT had instituted appropriate controls concerning its  
5 financial operations and intercompany transactions.

6 c. Exceeding loan authorizations by FOG's Board by  
7 millions of dollars, defendant WIEDERHORN also took millions of  
8 dollars of distributions and compensation in the form of shareholder  
9 loans from FOG, which "loans" he never intended to repay and never  
10 repaid.

11 d. In order to fund FOG's distributions and compensation  
12 to him in the form of shareholder loans, defendant WIEDERHORN caused  
13 FAT to extend and maintain intercompany loans to FOG while  
14 misrepresenting the purpose and nature of such intercompany loans and  
15 omitting, along with defendant HERSHINGER, the material fact that  
16 such loans from FAT to FOG were primarily for the purpose of funding  
17 FOG's distributions and compensation in the form of shareholder loans  
18 to defendant WIEDERHORN.

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1       B.     USE OF THE WIRES

2           128. On or about the dates set forth below, in Los Angeles  
 3 County, within the Central District of California, and elsewhere, for  
 4 the purpose of executing the scheme to defraud described above,  
 5 defendants WIEDERHORN and HERSHINGER transmitted and caused the  
 6 transmission of the following items by means of wire communication in  
 7 interstate and foreign commerce:

COUNT	DATE	INTERSTATE WIRE TRANSMISSION
TWELVE	5/11/2019	Email sent by defendant WIEDERHORN from the Central District of California to FAT's Board and others within, through, and outside of the Central District of California with the subject, "10Q & Earning Release"
THIRTEEN	4/28/2020	Email sent by defendant WIEDERHORN from the Central District of California to FAT's Board and others within, through, and outside of the Central District of California with the subject, "Supplement to Allen's memo re: Intercompany Loan"
FOURTEEN	8/31/2020	Wire transfer in the amount of \$10,000 from FAT's Bank of America bank account x7899 within the Central District of California through the FedWire system to CalPrivate Bank account x7817 in the name of Andrew A. Wiederhorn within the Central District of California
FIFTEEN	8/31/2020	Wire transfer in the amount of \$30,000 from FAT's Bank of America bank account x7899 within the Central District of California through the FedWire system to CalPrivate Bank account x7795 in the name of Andrew A. Wiederhorn within the Central District of California.

1 COUNTS SIXTEEN AND SEVENTEEN

2 [15 U.S.C. §§ 78m(k)(1), 78ff; 18 U.S.C. § 2(b)]

3 [DEFENDANTS WIEDERHORN, HERSHINGER, AND FAT]

4 129. The Grand Jury realleges paragraphs 1 through 102 and 105  
 5 of this Indictment here.

6 130. On or about the following dates, in Los Angeles County,  
 7 within the Central District of California, and elsewhere, defendant  
 8 FAT knowingly and willfully extended and maintained credit, arranged  
 9 for the extension of credit, and renewed an extension of credit, and  
 10 defendants WIEDERHORN and HERSHINGER willfully caused the extension  
 11 and maintenance of credit, arrangement for the extension of credit,  
 12 and renewal of an extension of credit, directly and indirectly, in  
 13 the form of the personal loans set forth below, to and for a director  
 14 and executive officer of defendant FAT, namely, defendant WIEDERHORN:

COUNT	DATE (S)	AMOUNT	SOURCE
SIXTEEN	1/30/2019	\$604,011.12	Transfer from Fatburger N.A. Mechanics Bank Account x3478 within the Central District of California to defendant WIEDERHORN's personal AMEX Account Ending in 5007 in the form of a personal loan to defendant WIEDERHORN
SEVENTEEN	4/1/2020 to 9/30/2020	\$2,050,000	Loans from defendant FAT to FOG pursuant to the IRCA then indirectly extended in the form of a loan to defendant WIEDERHORN within the Central District of California.

1 COUNTS EIGHTEEN THROUGH TWENTY

2 [15 U.S.C. §§ 78m(b) (2), 78ff; 17 C.F.R. § 240.13b2-2]

3 [DEFENDANTS WIEDERHORN AND HERSHINGER]

4 131. The Grand Jury realleges paragraphs 1 through 102 and 105  
5 of this Indictment here.

6 132. On or about the following dates, in Los Angeles County,  
7 within the Central District of California, and elsewhere, defendants  
8 WIEDERHORN and HERSHINGER, acting as officers of FAT, knowingly and  
9 willfully, directly and indirectly, made and caused to be made a  
10 material false and misleading statement, and omitted to state and  
11 caused another person to omit to state material facts necessary in  
12 order to make a statement made, in light of the circumstances under  
13 which the statement was made, not misleading, to accountants employed  
14 by FAT's auditor, Squar Milner, LLP, in connection with the audit,  
15 review, and examination of FAT's financial statements for fiscal year  
16 2019 and the preparation and filing of FAT's 2019 SEC Form 10-K.  
17 Specifically, defendants WIEDERHORN and HERSHINGER made the  
18 materially false and misleading statements, and omissions of material  
19 facts in order to make statements made not misleading, set forth in  
20 the following documents regarding: (i) the fact that many transfers  
21 of funds from FAT to FOG purportedly pursuant to an intercompany loan  
22 between the two companies were, in fact, made directly from FAT to  
23 defendant WIEDERHORN for his personal benefit; and (ii) that the  
24 majority of the funds extended from FAT to FOG pursuant to the  
25 intercompany loan between the two companies in fact went to

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1 defendant WIEDERHORN in the form of shareholder loans from FOG to  
 2 defendant WIEDERHORN.

COUNT	DEFENDANT (s)	DATE	DOCUMENT
EIGHTEEN	WIEDERHORN and HERSINGER	3/3/2020	Email, Subject: "FW: Auditor Requests," from defendant HERSINGER to Squar Milner, with attachment "Copy of Related Party Selections - AW Responses.xlsx," which forwarded a March 2, 2020 E-mail, Subject: "RE: Auditor Requests," from defendant WIEDERHORN to defendant HERSINGER, with the same attachment, in connection with preparation of FAT's 2019 SEC Form 10-K, related to characterization and disposition of "intercompany advances" from FAT to FOG
NINETEEN	WIEDERHORN	3/23/2020	"Fat Brands, Inc. RELATED PARTY QUESTIONNAIRE," in connection with preparation of FAT's 2019 SEC Form 10-K, related to characterization and disposition of "intercompany advances" from FAT to FOG and the existence of internal controls over related-party transactions

COUNT	DEFENDANT (s)	DATE	DOCUMENT
TWENTY	WIEDERHORN and HERSINGER	4/27/2020	Representation letter from FAT, signed by defendants WIEDERHORN and HERSINGER, in connection with preparation of FAT's 2019 SEC Form 10-K, representing that "[w]e have disclosed to you the identity of the entity's related parties and all information concerning related-party relationships, transactions, and amounts receivable from or payable to related parties of which we are aware"

1 COUNT TWENTY-ONE

2 [18 U.S.C. § 1350(c)(2); 17 C.F.R. §§ 229.402, 229.404]

3 [DEFENDANTS WIEDERHORN AND HERSHINGER]

4 133. The Grand Jury realleges paragraphs 1 through 102 and 105  
5 of this Indictment here.

6 134. On or about April 27, 2020, in Los Angeles County, within  
7 the Central District of California, and elsewhere, defendants  
8 WIEDERHORN and HERSHINGER knowingly and willfully certified that a  
9 periodic report containing financial statements, namely, a 2019 SEC  
10 Form 10-K for FAT, fully complied with the requirements of section  
11 13(a) of the Securities Exchange Act of 1934 and that the information  
12 contained in the periodic report fairly presented, in all material  
13 respects, the financial condition and results of operations of the  
14 issuer, knowing that the periodic report accompanying the statement  
15 did not comport with all the requirements of that section, namely,  
16 that the 2019 SEC Form 10-K omitted certain direct and indirect  
17 transfers of funds from FAT to defendant WIEDERHORN for his personal  
18 benefit in excess of \$120,000 during 2019.

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1 COUNT TWENTY-TWO

2 [18 U.S.C. § 1001(a)(2)]

3 [DEFENDANT HERSHINGER]

4 135. The Grand Jury realleges paragraphs 1 through 102 and 105  
5 of this Indictment here.

6 136. On or around December 1, 2021, in Los Angeles County, in a  
7 matter within the jurisdiction of the executive branch of the  
8 government of the United States, namely, the Federal Bureau of  
9 Investigation ("FBI"), IRS Criminal Investigation ("IRS-CI"), and the  
10 United States Attorney's Office for the Central District of  
11 California, defendant HERSHINGER knowingly and willfully made  
12 materially false statements and representations to the FBI knowing  
13 that these statements and representations were untrue, namely:

14 a. When asked by special agents of the FBI whether she  
15 was "at any point . . . aware of company funds being used to pay for  
16 [Andrew A. Wiederhorn's] personal [AMEX] credit card," defendant  
17 HERSHINGER answered, "No." In fact, defendant HERSHINGER then knew  
18 that FAT's funds were routinely used to pay for Wiederhorn's personal  
19 AMEX credit card.

20 b. When asked by special agents of the FBI, "at some  
21 point, did you become aware that [FOG] was loaning [Wiederhorn]  
22 money," defendant HERSHINGER responded, "I wasn't aware of that." In  
23 fact, defendant HERSHINGER then knew that FOG had a large shareholder  
24 loan with Wiederhorn.

25 c. When asked by special agents of the FBI, "is your  
26 understanding that . . . the purpose of the loans between [FAT and  
27 FOG] is for a business reason," defendant HERSHINGER responded that  
28 she "never had any understanding that this was for anything

1 personal." In fact, defendant HERSHINGER then knew that at least  
2 hundreds of thousands of dollars transferred by FAT to FOG were for  
3 personal benefit of Wiederhorn.

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1 FORFEITURE ALLEGATION

2 [18 U.S.C. § 981(a)(1)(C); 28 U.S.C. § 2461(c)]

3 137. Pursuant to Rule 32.2 of the Federal Rules of Criminal  
4 Procedure, notice is hereby given that the United States of America  
5 will seek forfeiture as part of any sentence, pursuant to Title 18,  
6 United States Code, Section 981(a)(1)(C) and Title 28, United States  
7 Code, Section 2461(c), in the event of any defendant's conviction of  
8 the offenses set forth in any of Counts Twelve through Twenty of this  
9 Indictment.

10 138. Any defendant so convicted shall forfeit to the United  
11 States of America the following:

12 (a) All right, title, and interest in any and all  
13 property, real or personal, constituting, or derived from, any  
14 proceeds traceable to the offenses; and

15 (b) To the extent such property is not available for  
16 forfeiture, a sum of money equal to the total value of the property  
17 described in subparagraph (a).

18 139. Pursuant to Title 21, United States Code, Section 853(p),  
19 as incorporated by Title 28, United States Code, Section 2461(c), any  
20 defendant so convicted shall forfeit substitute property, up to the  
21 value of the property described in the preceding paragraph if, as the  
22 result of any act or omission of said defendant, the property  
23 described in the preceding paragraph or any portion thereof (a)  
24 cannot be located upon the exercise of due diligence; (b) has been  
25 transferred, sold to, or deposited with a third party; (c) has been  
26 placed beyond the jurisdiction of the court; (d) has been

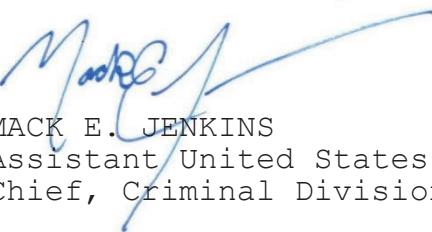
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1 substantially diminished in value; or (e) has been commingled with  
2 other property that cannot be divided without difficulty.

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4 A TRUE BILL  
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8 /s/  
9 Foreperson  
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E. MARTIN ESTRADA  
United States Attorney

  
12 MACK E. JENKINS  
13 Assistant United States Attorney  
14 Chief, Criminal Division

15 BRETT A. SAGEL  
16 Assistant United States Attorney  
17 Chief, Corporate and Securities  
Fraud Strike Force

18 ALEXANDER B. SCHWAB  
19 Assistant United States Attorney  
20 Deputy Chief, Corporate and  
Securities Fraud Strike Force

21 ADAM P. SCHLEIFER  
22 Assistant United States Attorney  
Corporate and Securities Fraud  
Strike Force

23 KEVIN B. REIDY  
24 Assistant United States Attorney  
Major Frauds Section

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